

REMARKS

Applicants previously presented claims 1-32 and 34-35 for examination. In the above-identified Office Action, all of the claims were rejected.

Applicants appreciate the Examiner's comments in her Office Action for the above-identified application. For the reasons to be stated below, however, Applicants respectfully traverse the Examiner's rejections.

By this amendment, Applicants have amended claims 1, 4-6, 10, 11, 15-17, 19, 20, 23-25, 29, 30 and 34; and have added new claims 37-39. Claim 36 has been cancelled without prejudice or disclaimer. Accordingly, claims 1-32, 34-35 and 37-39 are pending. Applicants respectfully request that the Examiner reconsider the application in light of the amendments and the remarks expressed herein.

112 Rejections

Claim 3 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite because "the phrase 'said comparing occurs' lacks antecedent basis." Applicants respectfully disagree.

Claim 3 depends on claim 2, which claims that "wherein said analyzing includes comparing ..." The "said comparing" in claim 3 refers to the comparing process as recited in claim 2. Thus, the phrase "said comparing occurs" in claim 3 does not lack antecedent basis. It is respectfully requested that the 112 rejection be withdrawn.

103 Rejections

Claims 1-32 and 34-35 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,970,837 to Walker et al. (hereinafter referred to as "Walker") in view of U.S. Patent No. 6,463,345 to Peachey-Kountz et al. (hereafter referred to as "Peachey"). Applicants respectfully disagree.

Walker

Walker pertains to a specific type of purchasing where a buyer orders a product and then physically goes to a store to pick it up. This position is supported, for example,

in the first paragraph of its summary, where Walker states that "the present invention introduces purchasing system methods and apparatus wherein a buyer arranges to purchase a first product using a communication network and subsequently takes possession of a substitute product at a retailer."¹ Similarly, the first sentence in the first paragraph of Walker's detailed description reads that "The present invention is directed to systems and methods wherein a buyer arranges to purchase a first product using a communication network and subsequently takes possession of a substitute product at a retailer."²

Walker Teaches Away From Product Delivery

Walker does not teach or suggest product delivery because Walker wants the customer to go to a store to pick up a product. In fact, Walker discourages product delivery, and teaches away from it.

For example, in its background, Walker teaches that "many buyers are not home during the day and cannot sign for, or otherwise arrange to receive, the product from a delivery service. In addition, the shipping service itself presents an additional cost that, depending on the product, may offset any savings made possible by shopping online. Finally, some products simply cannot be delivered at all, such as a service provided to buyers. With respect to a buyer, another disadvantage of online shopping is the delay involved with receiving a product. The online shopping community has not effectively captured the impulsive and impatient buyer market, because a buyer is more likely to impulsively purchase a product when he or she can take immediate possession of the product (instead of waiting several days for delivery). In other words, a buyer who wants a product immediately is likely to visit a retailer and not buy the product online."³

In distinct contrast, the focus of Applicants' claimed invention is on-line shopping that not only receives a customer order, but supports product delivery on-line. For example, the customer order includes delivery time information regarding the order.

¹ Col. 3, lines 23-27 in Walker, with emphasis added.

² Col. 4, lines 40-43 in Walker, with emphasis added.

³ Col. 2, lines 29-45 in Walker.

No Teaching or Suggestions in Walker on Buying an Item with Multiple Quantities

Walker does not teach or suggest buying an item with multiple quantities. Walker teaches ordering more than one item, for example, when Walker teaches that "A product may also be a package of multiple items and/or services. For example, a product may be a television and a Video Cassette Recorder (VCR). In this case, the purchasing system could arrange for the buyer to take possession of both items at a single retailer or at different retailers."⁴ However, Walker does not teach or suggest buying an item with a quantity larger than one.

This position is acknowledged in the third paragraph on page 3 of the Office Action, which states that "Walker does not explicitly disclose the at least one ordered item relating to an ordered quantity larger than one of a particular item of inventory", which Applicants agree.

Walker does not Teach or Suggest Considering More than One Order in Determining Substitution

Walker teaches different ways to provide substitutes when a buyer gets to a store to pick up a product. After the buyer reaches the store, a retailer device 400 receives product redemption information from the buyer⁵. Then, a substitute can be determined based on:

- the product redemption information, such as "(i) a UPC identifier associated with the first product; (ii) a Stock Keeping Unit (SKU) number associated with the first product; or (iii) a manufacturer associated with the first product"⁶;
- "a settlement price the retailer has agreed to accept in exchange for providing the first product"⁷;
- "a price the buyer has agreed to provide to the purchasing system in exchange for the right to take possession of the first product at the retailer"⁸;

⁴ Col. 7, lines 1-6 in Walker.

⁵ Col. 11, lines 44-46 in Walker.

⁶ Col. 12, lines 6-10 in Walker.

⁷ Col. 12, lines 12-13 in Walker.

⁸ Col. 12, lines 18-20 in Walker.

- “inventory information associated with the first product or the substitute product”⁹;
- a request from a buyer “that a substitute product be provided (e.g., by directing such a request to the retailer or the purchasing system)”¹⁰;
- “sales history information associated with the first product or the substitute product”¹¹; and
- either from the first product or the substitute product, one or more of “(i) an actual or forecast product demand; (ii) a product age or perishability; (iii) a product life cycle; (iv) information about a competing product; and (v) an actual or forecast profitability of the product.”¹²

The retailer device could also present “a group of substitute product choices to the buyer, and the buyer is allowed to select the particular substitute product from the group.”¹³

However, in the various approaches taught by Walker on product substitution, Walker does not teach or suggest determining substitutes for a customer based on information in another customer order with at least one item that has not been delivered.

This position is acknowledged in the third paragraph on page 3 of the Office Action, which states that “Walker does not explicitly disclose ... analyzing a selected portion of the received customer order taking into consideration at least another customer order to determine whether at least one item of inventory has been oversold, the analyzing being performed prior to the delivery of at least one ordered item of the received customer order and at least one ordered item of the at least another customer order”, which Applicants agree.

Walker does not Teach or Suggest Keeping a record of a Customer Substitution Preference or Making Use of it

In Walker, although a buyer could request for a substitute product, the request is done when the buyer is at the store to physically pick up a product. “For example, the

⁹ Col. 12, line 12 to col. 13, line 1 in Walker.

¹⁰ Col. 13, lines 5-7 in Walker.

¹¹ Col. 13, lines 9-10 in Walker.

¹² Col. 13, lines 17-20 in Walker.

¹³ Col. 13, lines 57-59 in Walker.

buyer may see a different product at the retailer and ask if that product may be used as a substitute product.”¹⁴

However, Walker does not teach or suggest keeping any record of the customer’s substitution preference by having it stored, or allowing the customer to modify the preference during the order, let alone deciding what to substitute based on information regarding the customer’s substitution preference.

No Teaching or Suggestions of Viewing Item Image in Walker

Walker also does not teach an embodiment allowing a customer to view the image of a product through a computing device to support the customer in placing the order. Walker teaches a buyer device 200 for the customer to place an order. The buyer device 200 seems to be a communication device. “The buyer device 200 may be, for example, a Personal Computer (PC), a portable computing device such as a Personal Digital Assistant (PDA), a wired or wireless telephone, a one-way or two-way pager, a kiosk, an Automated Teller Machine (ATM), a watch enabled to communicate through a network, or any other appropriate communication device.”¹⁵ The “purchasing system device 300 communicates with the buyer device 200 to establish a first price for a first product with the buyer.”¹⁶ However, there is no teaching of the buyer device allowing the customer to view an image of a product so as to support the customer in placing an order.

Since Applicants’ independent claims include limitations similar to those described above that Walker does not teach or suggest, it is submitted that Applicants’ claimed invention is patentably distinct from Walker. To remedy the numerous deficiencies, the Office Action introduces Peachey.

Peachey

Peachey pertains to determining what is available to promise to a customer, such as in the semiconductor industry. In its summary, Peachey explicitly states that: “The present invention is a computer implemented Availability Checking Tool enabling tool

¹⁴ Col. 28, lines 52-55 in Walker.

¹⁵ Col. 5, lines 29-35 in Walker.

¹⁶ Col. 6, lines 8-10 in Walker.

users to execute within a common work environment, from common enterprise data on a single level bill of material".¹⁷ The tool "considers assets and demands across multiple order management systems and manufacturing facilities"¹⁸. The tool includes (a) demand sources for inputting demand information, (b) a demand configurator to coordinate product requests from the demand sources, (c) a material resource engine providing material supply information, and (d) a solver providing optimized product availability information.¹⁹

In general terms, Peachey groups customers under forecast groups. A particular group's "tier and rank determines that group's importance with respect to other forecast groups."²⁰ "Each forecast group has a set of business rules associated with it. The associated set of business rules determines how each customer's order is filled within the group."²¹ This allocation enables the tool "to reserve some output for important customers, to insure that lower priority customers do not consume the output set aside for those important customers."²²

To determine an optimum solution, the tool "processes a new order from a customer, first by summing all firm demands (i.e., back orders, firm orders, order move-ins, order move-outs) and reservations for the material requested. Then, the total supply is reduced accordingly. This process, referred to as netting out, determines unallocated (free) supply available to fulfill (net out) the customer's new request."²³

Peachey also teaches that some orders may be flagged as unsatisfied. "If all supply, both currently available and future, for all same tier and lower tier forecast groups is allocated and the order remains unsatisfied in step 160, then, in step 162, the order is flagged (identified) as unsatisfied."²⁴

¹⁷ Col. 3, lines 57-61 in Peachey.

¹⁸ Col. 3, lines 61-63 in Peachey.

¹⁹ Col. 4, lines 3-12 in Peachey.

²⁰ Col. 5, lines 16-18 in Peachey.

²¹ Col. 5, lines 19-21 in Peachey.

²² Col. 6, lines 14-16 in Peachey.

²³ Col. 10, lines 24-31 in Peachey.

²⁴ Col. 11, lines 38-41 in Peachey.

No Teaching or Suggestion of On-line Shopping in Peachey – Nonanalogous Art

Peachey focuses on determining what is available to promise to a customer in, for example, the semiconductor industry. There is no teaching or suggestions of applying the system to on-line shopping. Peachey teaches different applications for different industries.

Nonanalogous art cannot be used to establish obviousness. In order for a prior art reference to be analogous art, it must be within the field of the inventor's endeavor or reasonably pertinent to the particular problem with which the inventor was involved. In re Deminski, 230 U.S.P.Q. 313 (Fed. Cir. 1986)

Applicants' claimed invention is in the field of on-line shopping. However, Peachey is in the field of determining what to promise to a customer, particularly in the semiconductor industries. As clearly pointed out by the Court in In re Fine, 5 USPQ 2d 1600 (Fed. Cir. 1988): "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." This is exactly what the Office Action was attempting to do, picking and choosing among isolated disclosures in the prior art to deprecate the claimed invention, based on hindsight reconstruction. This is not allowed, particularly when the two references are from nonanalogous art, and particularly when there is no motivation to combine these two references of disparate teachings.

Peachey does not Teach or Suggest Keeping a record of a Customer Substitution Preference or Making Use of it

Peachey teaches ways to determine what is available to promise to a customer, but Peachey does not teach or suggest any details regarding substitution.

Peachey just states that substitution could be done as determined by the user of the tool. If "equivalent parts may be substituted at appropriate times," the tool "automatically makes such substitutions directed by user based business decisions and in user defined time-periods."²⁵ Also, the tool "automatically handles complex semiconductor industry issues such as binning, substitutions and alternate processes. Rules of substitutions and alternate processes can be user-specified and varied over time

²⁵ Col. 10, lines 3-7 in Peachey.

to handle day-to-day decision making.”²⁶ Here, the user is the user of the tool, not the customers placing orders.

Peachey does not teach or suggest keeping any record of the customer's substitution preference by having it stored, or allowing the customer to modify the preference during the order, let alone deciding what to substitute based on information regarding the customer's substitution preference.

No Teaching or Suggestion of Viewing Item Image in Peachey

Peachey also does not teach or suggest allowing a customer to view the image of a product through a computing device to support the customer in placing an order. Again, this lack of support goes back to one of the basic differences between Peachey and Applicants' claimed invention. Peachey's products and processes are not for on-line shopping. A customer probably does not need to see how a transistor looks like before placing an order, but the customer probably would like to look at an image of a bottle of shampoo before buying it.

In Applicants' claimed invention, a customer places an order through a computing device and via a computer network. In many situations, to support the customer in placing the order for an item, it is advantageous for the customer to view an image of the item through the computing device. There are no such teachings or suggestions in Peachey.

Summary

Since Applicants' independent claims include limitations similar to those described above that Peachey does not teach or suggest, it is submitted that both Walker and/or Peachey, alone or in any combination, do not teach or suggest Applicants' independent claims 1, 15, 23, 29 and 34. Similarly, dependent claims 2-14, 16-22, 24-28, 30-32, 35, and 37-39 depend from one of the independent claims 1, 15, 23, 29 and 34 and are, therefore, also not taught or suggested by Walker and/or Peachey for at least the reasons noted above.

²⁶ Col. 5, line 66 to col. 6, line 3 in Peachey.

Additional limitations recited in the independent claims or the dependent claims are not further discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from Walker and/or Peachey.

It is submitted that claims 1-32, 34, 35, and 37-39 are patentably distinct from the cited references. It is respectfully requested that the Examiner withdraw the rejection of all claims 1-32, 34, and 35 under USC 103(a). Reconsideration of the application and an early Notice of Allowance are earnestly solicited.

In the event that the Examiner, upon reconsideration, determines that an action other than an allowance is appropriate, the Examiner is requested and authorized to telephone Applicant's representative below prior to taking such action, if the Examiner feels that such a telephone call will advance the prosecution of the present application.

Respectfully submitted,

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